

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	No. 61997-7-I
Respondent,)	
)	
v.)	DIVISION ONE
)	
EDDIE DYSON,)	UNPUBLISHED AMENDED OPINION
)	
Appellant.)	FILED: June 8, 2009

PER CURIAM. Eddie Dyson appeals the sentence imposed following his conviction of first degree attempted robbery and first degree burglary. He contends, and the State agrees, that the combination of 108.75 months confinement and 18 to 36 months of community custody exceeds the 120-month maximum sentence for his offenses. Dyson contends this matter should be remanded “to clarify or modify his sentence for Attempted Robbery.” The State agrees.

We recently held in State v. Linerud, 147 Wn. App. 944, 197 P.3d 1224 (2008) that when the combination of confinement and community custody exceeds the maximum sentence, the sentence is indeterminate and must be remanded for imposition of a determinate sentence not exceeding the statutory maximum. This is true even if the judgment and sentence recites that the total sentence shall not exceed the statutory maximum. Linerud, 147 Wn. App. at 949-51. Accordingly, we must remand for resentencing and for the court to exercise its discretion regarding the terms of confinement and community custody. Linerud, 147 Wn. App. at 951. We note that “[i]f the trial court wants to impose the maximum terms of confinement and community

custody, it may do so under the second option in RCW 9.94A.715(1), which permits it to impose a term of community custody equal to the earned early release time.” Order Den. Mot. for Recons. And Amending Op. at 1, Linerud, No. 60769-3-1 (Wash. Ct. App. Mar. 20, 2009), amendment to be published at Linerud, 147 Wn. App. at 950 n.17.

In his statement of additional grounds, Dyson challenges the composition of his jury, contends he was denied a speedy trial, and argues he received ineffective assistance of counsel. He also challenges his offender score arguing that prior convictions were invalid and that computation errors were made. The record on appeal does not support his assertions, and to the extent his arguments depend upon information outside the record on appeal, his remedy is to pursue a personal restraint petition. State v. McFarland, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995). On the record before us, Dyson does not establish a basis for overturning his convictions.

Remanded for resentencing.

FOR THE COURT:

Juan, J.
Dyson, A.C.J.
Grosse, J.

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